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IN THE

Supreme Court of the United States

No. 256

WALTER A. LEIMER, PETITIONER,

VS.

FRED B. HULSE, JOHN GROVER ET AL.,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI AND BRIEF IN SUPPORT OF PETITION.

WALTER A. LEIMER,
Petitioner and Attorney.

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To the Honorable Harlan Stone, Chief Justice of the United States, and Associate Justices of the United States:

STATEMENT OF THE CASE.

This is a case originally brought in the Circuit Court of Jackson County, Missouri, in Kansas City, by respondents of the Missouri Bar Advisory Committee in which petitioner was made the defendant in a disbarment procedure.

The venue was fixed in a jurisdiction hostile to petitioner.

At the time of the alleged trial the political offices of Jackson County as well as many other parts of Missouri were under the domination and control of the nationally notorious Pendergast political machine which petitioner had consistently and openly opposed over a period of years and that he had incurred the political enmity of many members of the Circuit Court of Jackson County. That under the facts and circumstances petitioner could not have a fair and impartial trial in a County wherein the Judges of the trial Court owed their office or political allegiance to the aforesaid political machine.

That petitioner duly made request of the Honorable Supreme Court of Missouri to fix the venue of the said suit in a Circuit wherein no animosity, ill will, personal or political prejudice existed against him, in order that he might have a fair and impartial trial and hearing which request was denied and refused by the Missouri Court. *Leimer* v. *Cook et al.*, No. 37880 Supreme Court of Missouri attached (Rec. p. 114).

Petitioner states that he was and is at all times hereinmentioned a citizen of the United States and of the State of Missouri (Rec. pp. 190-238).

He was duly licensed to practice law before the Courts of Missouri in the year 1922 and was later admitted to practice before the United States Courts and was so engaged until the time of the said proceedings and that a Federal right is involved (Rec. pp. 237-241).

That the decree of the Missouri Supreme Court will be *res judicata* and a bar to such a right.

Petitioner states that prior to the alleged trial his pleadings were stricken from the files by the trial court and that he was denied the right to make a complete defense (Rec. pp. 54, 55, 67, 80, 81, 254).

That the cause was *coram non judice* thereafter. The petition was in eight counts most of which were composed of capricious and inconsequential matters and alleged among other unsupported charges that the attitude of petitioner toward the courts was contemptuous (Rec. pp. 217-225).

Complainants with one exception were practicing lawyers acting as agents of the Supreme Court of Missouri which was to eventually hear and try the case *de novo* on appeal taken by means of a writ of error (Rec. pp. 217-226).

That in the prosecution and the adjudication of the rights of petitioner, which included the right to follow a lawful occupation and the right to make a living for himself and family, petitioner was charged with having contemned the various Courts both State and Federal but in forums other than the one in which the action was brought against him (Rec. pp. 217-8-9). Nothing in the record or any other record shows that petitioner was ever charged with or convicted of contempt by any such Court or Courts, nor is it so alleged in the complaint.

Petitioner has attempted by resort to the Courts of the land to prevent powerful interests from exercising subversive control over his clients and the public generally through politically prominent members of the Bar who in retaliation caused indignities to be heaped upon himself and family and in addition to charges filed petitioner has been wrongfully openly accused of indulging in antisemitism, and pugilism, of criminal contempt and moral turpitude and of having psychosis (Rec. pp. 217 to 226).

Petitioner has been a law abiding citizen of the community for more than half a century, and there are no records or evidence to the contrary. The witnesses with one exception were all lawyers or judges of the various

divisions of the trial and Probate Court and were members of the organization interested in the prosecution of petitioner and the suppression of his lawful activities wherein he had exposed oppression committed by certain lawyers and others in high office, in an attempt to prevent the unlawful practice of committing sane persons to the various insane asylums of Missouri (Rec. p. 241).

Petitioner was not charged with having violated any of the laws of the State of Missouri or the United States or of having ever betrayed or defrauded any client in all the years he has practiced before the Courts of Missouri and the United States (Rec. pp. 217 to 226).

The trial Court found against petitioner on all the Counts of the complaint except one, Count V, on charges which were mostly capricious and inconsequential as shown by the complaint (Rec. pp. 217-226).

Among other specific charges against petitioner was that of having sued several prominent lawyers and a life insurance company before a Court of competent jurisdiction, and of having charged them in the said action with wrongful bribing or inducing one of his clients to clandestinely and fraudulently settle a lawsuit. Although there was cogent and convincing evidence as well as admissions by the participants that illegal payments and other gratuities had been made the jury found against petitioner's client (Rec. p. 221).

The Missouri State Bar Committee was informed of the facts in this and other proceedings in which petitioner's clients had suffered fraud and oppression at the hands of a few lawyers but had refused to protect the public interests and petitioner sought relief before the Courts in the protection of their rights (Rec. pp. 241, 315).

Petitioner contends that the rights of liberty and property of his clients are paramount to the preservation

of the alleged integrity of a certain few lawyers who are members of the Bar of Missouri, and that the retaliation upon petitioner by the *quasi* judicial inquisitional commission constitutes an implied threat which in effect suppresses the truth, denies free speech and free access to the Courts of the land (Rec. pp. 251, 205).

The charges made by petitioner were properly made in pertinent pleadings, before Courts of competent Jurisdiction and were privileged even though they involved members of the Bar of Missouri (Rec. pp. 241-251).

The rights, liberty and property of petitioner's clients became submerged in the controversy among lawyers and the attempt to retaliate upon petitioner after most of his witnesses have died or left the State of Missouri.

Petitioner contends that the attempt to try alleged contemns committed in forums other than the trial court and malicious prosecution actions under the guise of a disbarment procedure, is an illegal, unreasonable and arbitrary abuse of judicial power.

Paid solicitors were employed by the State Bar Committee in an attempt to procure claims against petitioner (Rec. p. 251). Judges of the various divisions of the trial Court were seen in advance and efforts were made to and did prejudice them against petitioner. Members of the State Bar Committee sought to intimidate petitioner and compel him to seek the withdrawal of his license to practice law without a trial by threatening to ruin his business with adverse publicity (Rec. pp. 48-251).

Petitioner was openly advised by agents of the Court that no matter what evidence he presented it would be of no avail, and that all the judges of the Circuit Court would appear against him as witnesses (Rec. p. 54).

In the trial of the said cause Judge Southern of the Circuit Court of Jackson County disqualified himself and transferred the cause to Judge Terte from whom petitioner

took a change of venue because of his being a material witness and an interested party (Rec. p. 134).

The cause was then sent to Judge John R. Cook and petitioner filed a statutory affidavit alleging him to be an interested party and a material witness which under the law was sufficiently compelling to and did disqualify him, never the less he proceeded arbitrarily to try the cause (Rec. pp. 51-52-53-57-228-254).

That the matter was *coram non judice* thereafter. Petitioner was denied the benefit of the usual and customary proceedings and the rules of evidence and various pleadings were arbitrarily stricken from the files by order of the trial judge (Rec. pp. 55-213).

He was denied the right to file a supplemental answer and refused the right of having a proper record of the same (Rec. pp. 54-55-68-189).

The trial judge after trial refused to sign the bill of exceptions and arbitrarily ordered petitioner's bystander's bill of exceptions stricken from the record after he had allowed its filing (Rec. pp. 78-79-80-211) all without proper record or lawful justification.

Petitioner appealed to the Supreme Court by means of a mandamus proceeding which was by it refused (No. 38851—September 25, 1943, annexed).

The bill was later admitted by that Court however (Rec. pp. 95-178). The Supreme Court then proceeded to try the case *de novo* after argument had been made, which alleged trial took place in the chambers of the Court behind closed doors, upon alleged evidence not of record in the cause and compiled by the agents of the Court. The findings of the Supreme Court unsupported by an authentic record are unfair, unjust and misleading conclusions as well as an arbitrary abuse of its power. The Court has inadvertently confused the issues and petitioner's right to take more than one change of venue from Judges

that were interested parties and alleged to be material witnesses with petitioner's right to take a change of venue because of bias and prejudice. The issues which petitioner sought to formulate have been inadvertently ignored (Rec. p. 282). The Missouri Supreme Court rendered its decree which forever disbars petitioner from the practice of law within the State of Missouri (Rec. p. 293).

The opinion of the Supreme Court of Missouri alleging that there was an agreement to retry the cause before the Court in an *ex parte* procedure which would prevent a review before this Court is unsupported by the record and denied by petitioner.

Petitioner states that there was no *bona fide* stipulation to that effect and none in the record and that if it was the intention of the Missouri Supreme Court to so hold an alleged trial *de novo*, it exceeded its authorized powers and that such procedure is violative of statutory and organic law.

Further that petitioner was inadvertently subjected to surprise and entrapment (Rec. p. 316).

In its exercise of police power of the State of Missouri the Supreme Court in an attempt to arbitrarily regiment the Bar of Missouri and the United States, by legislative edict has inaugurated a *quasi* judicial inquisitional commission and has delegated to it arbitrary, autocratic and unauthorized powers, or has subsequently, with knowledge of the facts and by its inadvertent failure to act, ratified and adopted the usurpation of such powers by the said commission or commissions.

That among the powers so usurped are; the arbitrary and unlimited abuse of the subpoena, according to the will or caprice of the inquisitional committee (Rec. p. 248); the power to assess, levy, collect and disburse taxes imposed upon all members of the Bar of Missouri and the United

States without providing reasonable or business like audits, supervision and control over such funds (Rec. pp. 245-6, 252-3); the power to solicit claims and prosecute litigation among lawyers who are competitors of the various committees and which litigation is finally submitted to the Missouri Court for adjudication.

That the said commission is controlled by a clique of practicing lawyers, acting in a dual capacity, subservient to personal and political interests (Rec. p. 247).

That the autocratic powers usurped by the said commission or committee constitute a dangerous system of remote control which menaces the rights of petitioner and all litigants dependent upon the Bar for representation before the Courts both State and Federal as well as those about to appear before such tribunals (Rec. pp. 209-253).

That no adequate, reasonable or businesslike means of supervision has been provided to protect either the Bar of Missouri and the United States or the public whom they represent from such abuses and from the implied threat created by the inauguration of rule by commissions (Rec. p. 252). That among the arbitrary powers usurped by such commissions are combined all three functions of government. The effect of the exercise of unreasonable and unauthorized powers is to impel fear into the minds of petitioner, members of the Bar and the public whom they represent and to coerce judgments, deny free access to, and due process of law before, the Courts of Missouri and the United States. Further to subvert the inherent rights and privileges of petitioner and all litigants appearing or about to appear before such Courts (Rec. pp. 241-253).

Petitioner in an effort to protect the life, liberty and property of his clients as well as his own rights, has consistently attacked in the Courts of Missouri the efforts

to arbitrarily regiment the Bar of Missouri and the United States and the usurpation of office by political appointees of the Court in the exercise of unauthorized powers which enables them and their associates by coercion, intimidation and oppression to dominate the free will of petitioner and other members of the Bar of Missouri and the United States and the litigants whom he and they represent (Rec. 241-251-2-3).

That in every such instance his efforts have been thwarted.

That among the legal proceedings instituted by petitioner to protect his and his clients rights were declaratory judgment actions, mandamus, prohibition, counterclaim, answer and numerous ancillary proceedings (Rec. pp. 36, 189-200) (No. 38851—37880, annexed).

Such proceedings have been consistently stricken from the files, or the Courts have refused to entertain jurisdiction or to make a record upon which petitioner could obtain a proper review before a disinterested Court.

Petitioner further contends that he did not instigate a groundless suit against any lawyers but that he produced claims in the five days consumed in the said trial.

On the other hand the Bar Advisory Committee of Missouri filed numerous (twenty two in number) charges against petitioner which were without merit and known to be such and which they made no effort to support or prosecute in a lawful manner. That the trial Court found for petitioner on this Count V (Rec. p. 3).

Thereafter the Missouri Supreme Court with knowledge of the facts or with such knowledge as would put a reasonably prudent person upon inquiry, as shown by the pleadings and findings has inadvertently discriminated against petitioner and practiced partiality and preference in penalizing petitioner and at the same instance in ratifying and adopting similar acts on the part of its agents,

members of the Missouri Bar Advisory Committee, who are likewise members of the Bar of Missouri (Rec. pp. 224, 257).

That the case was tried *de novo* by Division One of the Supreme Court of Missouri upon a writ of error (Rec. p. 142).

Petitioner filed motions for a rehearing and for a transfer of the Cause to the Court *en banc*, both of which motions were denied (Rec. p. 294 and 311).

It is contended that the Honorable Supreme Court of the United States has jurisdiction to review the decree and judgment in question for the following reasons:

1. That petitioner a citizen of the United States was denied a fair trial and due process of law and the equal protection of the laws in violation of the inhibitions of the Fourteenth Amendment to the Constitution of the United States.

2. That the affidavit duly filed in the trial Court by petitioner alleging that John F. Cook, Judge thereof was an interested party was sufficiently compelling to and did disqualify him in the trial of the Cause and that the entire procedure thereafter was *coram non judice*.

3. That the entire procedure and the decree of the Supreme Court of Missouri is against the supreme law of the land and contrary to and violative of Article VI of the Constitution of the United States.

4. That the act of being admitted to the Bar did not deprive petitioner of his Constitutional rights.

5. That Federal questions are involved which include the right to practice law before the Courts of the United States and the right of a hearing and review before such Courts.

6. That the Missouri Supreme Court exceeded its jurisdiction and that the decree and judgment thereof are unsupported by the judgment Rolls, the evidence of record, the record proper and that said decree is a nullity.

7. That the means used wherein the Supreme Court acted as prosecutor and judge and jury in the cause concurrently, constituted the denial of a fair trial, and the equal protection of the laws, and is violative of the inhibitions of the Fourteenth Amendment to the Constitution of the United States.

8. That the decree is oppressive and unreasonable, and subjects all litigants who must necessarily appear before the Courts through the representation of counsel to the whims and caprice of a commission.

9. That the right to labor and follow a calling of one's choice is an inherent right subject to the inhibitions of the Fourteenth Amendment to the Constitution of the United States.

10. That the attempt to arbitrarily regiment the Bar of Missouri and the United States through the creation of a commission by judicial edict and the delegation of unreasonable and unauthorized powers to political appointees of the Court, together with the failure to protect the Public and the Bar from the usurpation of such authority, constitutes an oppression which subverts the purposes for which the Courts were organized and that the Missouri Supreme Court has inadvertently exceeded its jurisdiction in attempting to delegate unauthorized powers never intended, or give it under the Constitution of the United States and in violation of Article III and the Fourteenth Amendment thereof.

The questions presented are as follows:

1. The Supreme Court has no jurisdiction to retry a cause in which the trial Court had no original jurisdiction.

2. That the means used to try alleged contemns claimed committed in forums other than the trial Court is violative of organic and Constitutional law and is arbitrary and oppressive.

3. That the means used wherein the Missouri Supreme Court acted as prosecutor, judge and jury concurrently, constitutes the denial of a fair and impartial hearing and of due process of law and violates the inhibitions of the Fourteenth Amendment for the Constitution of the United States.

4. That the Missouri Supreme Court in rendering an opinion based upon conclusions unsupported by the record, violates the rights of petitioner, a citizen of the State of Missouri and of the United States, in unlawfully preventing him from practicing law before the United States Courts, and is contrary to Article VI in the Fourteenth Amendment to the Constitution of the United States.

5. That the Missouri Supreme Court has no jurisdiction to try a case *de novo* upon alleged facts compiled by its own agents, not of the record proper, held in its chambers, behind closed doors, in an *ex parte* manner.

6. That the entire procedure and the decree of the Supreme Court of Missouri, unsupported by the record proper and the judgment rolls is a nullity.

7. That the trial court and the Supreme Court of Missouri exceeded their respective jurisdictions in the attempt to exercise police power of the State of Missouri, for the benefit of a few lawyers wherein no public interest was involved, and in a manner contrary to organic and statutory law.

8. Petitioner was not afforded a fair trial and hearing and due process of law.

9. That the changing of, or the abrogation of the existing fundamental rules of procedure and evidence in the trial of the case by the Supreme Court of Missouri, or the inadvertent evasion of such rules, denies petitioner the equal protection of the laws and is contrary to the inhibitions of the Fourteenth Amendment.

10. That the entire cause is *coram non judice.*

11. That the matter is momentous and in effect is an implied threat affecting the vested rights of petitioner, all members of the bar, and the litigants whom they represent.

12. That the attempt to try malicious prosecution actions within a disbarment procedure abrogating the existing fundamental procedure of such actions, constitutes an arbitrary and unreasonable discrimination which has denied petitioner the right to make a proper defense and was and is contrary to, and violative of, the Fourteenth Amendment to the Constitution of the United States.

13. That the creation of a *quasi* judicial inquisitional commission by the Supreme Court of Missouri in an attempt to arbitrarily regiment the Bar of Missouri and the United States by legislative edict, wherein arbitrary and unauthorized powers have been delegated to commissions controlled by practicing lawyers composed of political appointees of the Court, and the inadvertent ratification of the usurpation of such unauthorized powers by the said commissions, which includes the power to rise above their creative source and to supersede the Courts of Missouri and the United States and to dictate whom may appear before such Courts, constitutes a denial of free access to the Courts of the land both State and Federal and

inaugurates government by bureaucracy, all of which is in conflict with the supreme law of the land, as well as being an encroachment on the legislative and executive branches of the government by the judiciary.

14. That the means used in the procuration of the judgment decree and findings, were unfair and denied petitioner due process of law and the equal protection of the laws in the defense of his rights and violated the inhibitions of the Fourteenth Amendment to the Constitution of the United States.

15. That the prevention of a proper review before the Courts of the United States by a suppressed record in an *ex parte* procedure is in excess of the jurisdiction conferred upon the Supreme Court of Missouri and is confiscatory as to the rights, good will, liberty and property of petitioner.

16. That the Supreme Court of Missouri has inadvertently practiced partiality and prejudice in penalizing petitioner for the filing of an alleged groundless suit and at the same instance in ratifying and adopting similar acts on the part of its agents the Bar Advisory Committee of Missouri.

17. That the decree and findings inadvertently fail to clarify the issues and to properly discriminate between the right of a change of venue taken because of the interest of the trial judge with the right of a change of venue taken because of bias and prejudice of the trial judge and the decisions affecting each, all to the prejudice of petitioner.

18. That the decree and findings of the Missouri Supreme Court are arbitrary, unjust, unreasonable and oppressive and that the petition fails to state a cause of action in disbarment.

19. That the franchises, good will, property and liberty of petitioner have been confiscated without any violation of the laws of the State of Missouri or the United States.

20. The decree of the Missouri Supreme Court impels fear, apprehension and confusion into the minds of the Bar of Missouri and the United States and subjects the lawyer in every unsuccessful lawsuit to attack by a commission composed of his competitors and provided with unlimited funds for which no adequate, proper or reasonable supervision, control and accounting have been provided.

21. That the rights of petitioners clients and the public have been ignored, overridden and submerged in a controversy involving lawyers.

Wherefore your petitioner prays that a Writ of Certiorari issue under the seal of that Court directed to the Supreme Court of Missouri commanding said Court to certify and send to this Court a full and complete transcript of the record and the proceedings of the said Supreme Court of Missouri had in the case numbered and entitled on its docket No. 38363, In the Matter of Disbarment of Walter A. Leimer. Walter A. Leimer, Plaintiff in error, v. Fred B. Hulse, John Grover *et al.*, Defendants in error, to the end that this cause may be reviewed and determined by this Court as provided by the Statutes of the United States and that the Judgment of the said Court be set aside and judgment entered if favor of petitioner and for such other relief as to the Court seems proper.

Dated July 5, 1944.

WALTER A. LEIMER,
Petitioner and Attorney.

BRIEF OF PETITIONER CITING CASES BELIEVED TO BE CONTROLLING.

Jurisdictional Points.

POINT 2.

The interest of a trial judge in pending litigation disqualifies him and the matter is *coram non judice*.

State ex rel. v. *Smith*, 176 Mo. 90, 91.

POINT 6.

A finding without evidence is inconsistent with justice and an exercise of arbitrary power.

Interstate Commerce Commission v. *Louisville and Nashville Ry. Co.*, 227 U. S. 88.

POINT 7.

That property rights may not be arbitrarily invaded under the guise of police power.

Dobbins v. *Los Angeles*, 195 U. S. 223, 236, 25 S. Ct. 18.

Holden v. *Hardy*, 169 U. S. 336, 398.

McLean v. *Arkansas*, 211 U. S. 539, 547.

Lawton v. *Steele*, 211 U. S. 137.

Meyer v. *Nebraska*, *infra*.

POINT 8.

The liberty and property of a citizen must be protected by rudimentary requirements of fair play.

Morgan v. *U. S.*, 304 U. S. 1, 14, 58 S. Ct. 773.

Ohio Bell Telephone Co. v. *Public Utilities Commission*, 301 U. S. 292, 300, 57 S. Ct. 724.

Tumey v. *Ohio*, 273 U. S. 510.

POINT 9.

The right to labor at a lawful occupation of one's own choosing and the good will derived therefrom constitute both liberty and property.

Allgeyer v. *State of Louisiana*, 165 U. S. 578-590-17 S. Ct. 431.

The Slaughter House Cases, 16 Wall. 36, 21 L. Ed. 394.

Ex parte Virginia, 100 U. S. 339.

Meyer v. *Nebraska*, 262 U. S. 390, 399.

POINT 10.

That no right granted or secured by the Constitution can be impaired or destroyed by State enactment, whatever may be the source from which the power to pass such enactment may be derived.

Connolly v. *Union Sewer Pipe Co.*, 184 U. S. 540, 558.

The judicial branch of government may not be elevated over the legislative branch and may not be given powers limited merely by its own discretion.

Cary v. *Curtis*, 44 U. S. 236, 11 L. Ed. 576.

Points of Law.

POINT 2.

The attempt to try alleged direct contemns alleged committed in forums other than the trial Court an *ex parte* procedure within the Court chambers behind closed doors, from evidence not of record compiled by agents of the Court acting as prosecutors at the same time and instant and to render a decree thereon is violative of all organic and statutory law.

Ex parte Bradley, 7 Wall. (U. S.) 364.

Ex parte Robinson, 19 Wall. (86 U. S.) 505.

In re Debbs, 158 U. S. 564, 565, 595.
Durham v. *United States*, 289 Fed. 76.
State ex inf. v. *Sheppard*, 177 Mo. 205, 237.
State ex rel. Houghey et al. v. *Ryan, Judge Garver et al.*, 182 Mo. 349, 355.
Ex parte LeMond, 295 Mo. 586, 245 S. W. 1057.
In re Neville et al., 117 Fed. 448, 452.
Rapalje on Contempt, Par. 13, p. 15.
Morgan v. *U. S., supra.*

POINT 3.

The right to a fair and impartial hearing is an inherent right protected by the inhibitions of the Fourteenth Amendment and that Judges may not extend their activties to become assistant prosecutors.

Goldstein v. *U. S.*, 63 F. 2d 609-613.
Sunderland v. *U. S.*, 19 F. 2d 203-216.
Tumey v. *Ohio*, 273 U. S. 510-535.

* * * * * * * *

Among the outstanding cases in the long line holding that the right to follow a chosen occupation comprised both liberty and property and falls within the inhibitions of the Fourteenth Amendment to the Constitution are, *Ex parte Virginia*, 100 U. S. 339, the *Slaughterhouse cases*, 16 Wall. 36, and *Allgeyer* v. *Louisiana*, 165 U. S. 578, 590.

Such authority as this is fundamentally unquestioned.

As to a fair trial this and other Courts have consistently held that this is essentially imperative to the effectuation of justice.

In *Tumey* v. *Ohio*, 273 U. S. 510, 535, this Court held

> "no matter what the evidence was against him he had the right to an impartial judge."

The Court further held in this same case that the necessary factors of a fair trial are an adequate hearing

and an impartial tribunal free from any interest or prejudice.

Such rights cannot be lawfully abrogated by an appellate Court nor by findings based upon conclusions unsupported by the rolls and the record.

In the case of *Interstate Commerce Commission* v. *Louisville and Nashville Ry. Co.*, 227 U. S. 88, this Court held that a finding without evidence would be inconsistent with justice and an exercise of arbitrary power.

This is in the nature of a special decree which deprives petitioner of the equal protection of the laws.

In the matter of venue the Missouri Supreme Court has more than once held that a trial judge cannot pass upon his own qualifications under an affidavit for a change of venue upon a fair trial.

Thompson v. *Sanders*, 334 Mo. 1100-1105, 70 S. W. 2d 1052.

In *State ex rel. Scott* v. *Smith*, 176 Mo. 90, 106, it was held that an affidavit in due form disqualifying the trial judge was conclusive.

In this later case it was also held that an appellate Court has no jurisdiction to try a case *de novo* without the exhibition of claims and the service of process.

With regard to the exercise of the police power of the State, petitioner's contention that the exercise of such is an attempt to arbitrarily regiment the Bar of Missouri and the United States, is subject to the inhibitions of organic and Constitutional law and that to authorize its exertion there must be a public interest involved.

In the long unbroken line of cases supporting this contention are *Lawton* v. *Steele*, 152 U. S. 133, 136-7, 14 S. Ct. 499, it was held

> "in order to justify the state in interposing its authority on behalf of the public, it must appear,

First, that the interests of the public generally as distinguished from those of a particular class, require such interference.

Second, that the means are reasonably necessary for the accomplishment of the purpose and are not unreasonably oppressive on individuals."

Also in *Meyer* v. *Nebraska,* 262 U. S. 390, 399, this Court held:

"The exercise of police power can be justified only when it adds in a substantial way to the security of fundamental rights."

In *McLean* v. *Arkansas,* 211 U. S. 539, l. c. 547, it was held:

"It is also true that the police power of the State is not unlimited, and subjected to judicial review and when exerted in an arbitrary and oppressive manner such laws may be annulled as violative of the rights protected by the Constitution."

All these and others support the contention that such police power cannot be exerted on behalf or in the interest of a class or of a few lawyers.

In *Connolly* v. *Union Sewer Pipe Co.,* 184 U. S. 540, l. c. 548, this Court held that no right granted or secured by the Constitution can be destroyed or impaired by State enactment, whatever may be the source from which the power to pass such enactment may be derived.

In opposition to the proposition of trying alleged direct contemns *de novo,* upon hearsay extrinsic evidence dehors the record, by indirect means under the guise of a disbarment procedure, while in all probability no Court has ever gone to such extremes as in the present case there is ample authority in support of petitioner's contentions. Among the outstanding cases are, *Ex parte Bradley,* 7 Wall. 364; *Ex parte Robinson,* 19 Wall. 505; *In re*

Debbs, 158 U. S. 564-5, 595; *State ex inf.* v. *Sheppard*, 177 Mo. 205, 237; *State ex rel. Houghey et al.* v. *Ryan, Judge Garver et al.*, 182 Mo. 349, 355.

The gist of authority is, that direct contemns are triable in a summary manner, at the time before the Court having jurisdiction of the parties and the subject matter.

Rapalje who is an unquestioned authority upon contempt clarifies the matter, if there was ever any doubt, in his work on Contempt, page 15, paragraph 13.

The rule has been established as far back as Blackstone, who in his commentaries calls attention to the fundamental principles then in existence regulating the subject.

To deviate from the established law and to legislate special laws upon the subject by judicial edict is to override organic law arbitrarily, to cause consternation and impel fear and uncertainty in the minds of the Bar, both State and Federal, to deny due process of law and the equal protection of the law and to invade the inhibitions of the Fourteenth Amendment and the innate rights of petitioner.

While sometimes Courts have attempted to legislate themselves into a position by judicial edict, to justify the arbitrary abuse of power in disbarment procedure, nevertheless the fundamental law remains unchanged.

The Courts are scarcely in a position to legislate or delegate themselves unauthorized powers never given them originally, and then to pass upon the facts and the law as to their own jurisdiction.

In *Pleasants* v. *United States*, the Court held, 305 U. S. 582, that a Court may not legislate by construction.

Such a question involves a delicate situation and eradicates the line of demarcation between justice and autocratic dictatorship.

The methods used in the procurement of the judgment and decree inaugurates special laws, overrides existing organic law and invades individual rights.

Here is an instance where he agents of the Court solicit claims against petitioner and then act as prosecutors in the cause, while their principal sits in judgment upon the facts and the law and proceeds to pass upon extrinsic evidence dehors the record at an *ex parte* procedure.

It is difficult to find a situation directly in point and petitoner believes that he is the first to have the courage to assert the rights of the Bar in opposition to the abuse of arbitrary power on the part of a Court, with the result that he has been subjected to public abuse and reprisals by the political appointees of the Court.

It is manifest upon the records that petitioner was tried, if at all, upon a special law inaugurated to fit the occasion, before a tribunal acting as prosecutor and judge concurrently, upon extrinsic evidence dehors the record and penalized although no violation of the laws was alleged or proven nor were his client's rights or property invaded.

The judgment was for the benefit of a few lawyers wherein no public interest was involved. It was arbitrary and despotic.

Petitioner's pleadings and defense was arbitrarily stricken from the files and the appellate Court undertook to exercise original jurisdiction, and to suppress the record which prevented a proper review before the Courts of the United States, in a manner not provided by law and in conflict with the innate rights of petitioner and Constitutional inhibitions protecting the same.

ARGUMENT.

This is a momentous decision affecting not only the rights, liberty, property and franchises of petitioner but stands out as an implied threat, which impels fear and uncertainty into the minds of the Bar of Missouri and the United States and imperils the vested rights of all litigants dependent upon the Bar for representation before the Courts of the land.

It subjects any lawyer who loses a suit to the harassment of a political inquisitional committee composed of his competitors, without the benefit of any statute of limitation or any adequate means to protect him from the whims and caprice of those dominated by outside influences or motivated by ulterior purposes.

Among other errors the appellate Court has attempted to legislate itself into a position whereby it might exercise original jurisdiction without the exhibition of claims and the service of process, all of which is in excess of its authorized powers and Constitutional authority.

The creation of a commission composed of political appointees of the Court comprising competitors of petitioner, acting in a dual capacity as officers of the Court and prosecutors of the cause concurrently, the alleged trial before an interested judge and a material witness, the further trial *de novo* by the appellate Court in an *ex parte* proceeding, upon extrinsic evidence dehors the record compiled by its own agents, the findings and decree unsupported by the rolls and the record proper, all have combined to deprive petitioner of his property, liberty, franchises and good will without due process of law.

Undoubtedly the Missouri Court exceeded its jurisdiction in rendering such a decision wherein no violation

of the law was charged or proven against petitioner.

This political bureaucratic superstructure so organized has superseded the Courts, both State and Federal and destroyed the very purpose for which the Courts were organized.

This Honorable Court should take judicial notice of the inefficient, unbusinesslike and impracticable method of delegating the control of the vast funds taxed against and collected from the Bar of Missouri and the United States, wherein disbursements aggregating one hundred fifty thousand dollars have been effected in the disbarment of some twelve or fifteen lawyers and wherein no prosecuting lawyer has received an authorized fee for his services.

The tremendous power resultant from the control of this enormous fund stands out as an obstacle in the path of justice and has impaired the vested rights not only of petitioner but of other members of the Bar of the State of Missouri and the United States and to the extent that a fair trial and hearing are impossible in the State of Missouri.

The real purpose for the exercise of the police power of the State of Missouri, namely the protection of the rights of the public, has been lost sight of in the controversy among lawyers.

Petitioner contends that the wave of regimentation which is sweeping over the land is climaxed in this decision involving the freedom of the Courts, the freedom of speech and the right to follow a lawful occupation free from harassment, intimidation, domination and oppression by a clique of practicing lawyers.

The Missouri Supreme Court committed further error and exceeded its jurisdiction in rendering a decision, the findings of which are either unsupported by the rolls and the record or impeached thereby.

The decree and findings comprise a special judgment which is for the benefit of a few lawyers and by its apparent partiality and prejudice has not only deprived petitioner of a fair trial and due process of law but has also deprived him of the equal protection of the laws in violation of the inhibitions of the Fourteenth Amendment to the Constitution.

In finality the rights, liberty and property of petitioner's clients whom he sought to protect from the depredations of a few lawyers have become submerged and ignored by a commission not amenable to any authority, which supersedes the Courts of Missouri and the United States and in the further attempt to uphold the dignity of the inferior Courts by indirect means, in a manner exceeding the jurisdiction of the appellate Court, when such Courts have inherent power to protect themselves.

The decision and the manner of its procurement are apparently without parallel or precedent in the judicial history of the land.

There was nothing fair about the whole procedure which amounted to the confiscation of the property, rights and franchises of petitioner without due process of law and deprived petitioner of the equal protection of the laws.

The reasons why this Court should exercise its jurisdiction are patent upon the face of the record and too obvious to be denied.

Respectfully submitted,

WALTER A. LEIMER,

Petitioner.

(18)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 256.

WALTER A. LEIMER, PETITIONER,

VS.

FRED B. HULSE ET AL., RESPONDENTS.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

ROSCOE P. CONKLING,
St. Joseph, Missouri,
FRANK W. HAYES,
Sedalia, Missouri,
Attorneys for Respondents.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. .....

WALTER A. LEIMER, PETITIONER,

VS.

FRED B. HULSE ET AL., RESPONDENTS.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

RESPONDENTS' STATEMENT OF FACTS.

The petitioner seeks to have this court review by Writ of Certiorari the order, judgment and opinion of the Supreme Court of Missouri in the case of Walter A. Leimer, plaintiff in error, vs. Fred B. Hulse *et al.*, defendants in error, reported in 178 S. W. 2d 335, wherein the petitioner was disbarred from the practice of law within the State of Missouri.

The official and professional conduct of the petitioner, a member of the Bar of the State of Missouri, was investigated in 1936 by the Bar Committee of the 16th Judicial Circuit of Missouri, which comprised Jackson County, Missouri. At the petitioner's request the State Bar Advisory Committee took over such investigation. After a hearing the case was held in suspension upon the advice of the petitioner and his then counsel that the matters then under investigation would be corrected, and upon promises of future good behavior (See *Leimer* v. *Hulse*, 178 S. W. 2d l. c. 341).

The State Bar Advisory Committee appointed by the Supreme Court of Missouri, under its Rule 36, was compelled in 1941, by the further misconduct of the petitioner, to institute a new investigation of him. That hearing was begun on January 3, 1941. At such hearing the petitioner was represented by counsel and at great length the petitioner in person and through his witnesses presented his explanation of such matters as were then under investigation (See *Leimer* v. *Hulse*, 178 S. W. 2d l. c. 341).

As a result of that hearing an information was filed in the Circuit Court of Jackson County, Missouri, by Fred B. Hulse *et al.*, as members of the State Bar Advisory Committee appointed by the Supreme Court of Missouri under its Rule 36, (351 Mo., p. xv) as informants charging the petitioner, Walter A. Leimer, with professional misconduct and with specific violations of Rule 35 of the Supreme Court of Missouri, as specifically set out in the reported opinion (178 S. W. 2d 335, l. c. 337, 338). After the filing by petitioner of many dilatory motions, pleas and affidavits for change of venue, unauthorized by the statutes and laws of Missouri, issue was joined on March 24, 1942, by the filing of the petitioner's answer. The cause came on for trial in the Circuit Court of Jackson County,

Missouri, on April 20, 1942, and continued daily thereafter until March 4, 1942. On June 8, 1942, the Circuit Court of of Jackson County, Missouri, entered its finding of facts and decree in which it specifically found the facts against the petitioner herein on all counts of the information (except Count V) and found that Rule 35 of the Supreme Court of Missouri (Cannon on Ethics of American Bar Association) had been violated, and disbarred the petitioner herein from the practice of law in the courts of the State of Missouri.

Thereafter, the Supreme Court of Missouri granted the petitioner a writ of error to the Circuit Court of Jackson County, Missouri, and the matter was set for hearing and submission in the Supreme Court of Missouri. Briefs were filed by both of the parties and the cause was orally argued by the petitioner and by counsel for the State Advisory Committee. On January 3, 1944, the Supreme Court of Missouri entered its order and judgment affirming the decree of the trial court and filed its opinion, in which it ruled that the testimony was "sufficient and ample to sustain the findings of fact made by the trial court" and "fully support the judgment" of disbarment (*Leimer* v. *Hulse*, 178 S. W. 2d 335). The petitioner sought a review of that order and opinion of the Supreme Court of Missouri by filing his motion for rehearing, which motion was by the Supreme Court denied. The petitioner also filed in the Supreme Court of Missouri (Division No. 1) a motion to transfer the cause to the court *en banc*, which motion the Supreme Court denied.

By petition now filed here the petitioner seeks a Writ of Certiorari directed to the Supreme Court of Missouri to have the Judgment of the Supreme Court of Missouri reviewed by this court. The petitioner has not served upon respondents or their counsel any record in this case and reference cannot be made herein to pages in the original record filed by the petitioner in this court.

POINTS AND AUTHORITIES.

I.

The petition for the writ of certiorari should be denied because it violates Section II of Rule 38 of this court in that it does not contain a clear and concise statement of the case.

Rule 38, S. Ct., U. S.

Southern Power Co. v. *North Carolina Public Service Co.*, 263 U. S. 508.

Magnum Import Co. v. *Houbigant, Inc.*, 262 U. S. 159.

II.

The petition for the writ of certiorari should be denied by this court because it does not appear from the petition for the writ that the Supreme Court of Missouri has decided a federal question of substance not heretofore determined by this court, nor does it appear that the Supreme Court of Missouri has decided any federal question in a way not in accord with the applicable decisions of this court.

Section V (A) of Rule 38, S. Ct., U. S.

III.

The petition for the writ of certiorari should be denied because this is a disbarment proceedings and the Supreme Court of Missouri has the inherent right to regulate the admission and disbarment of its officers and attorneys.

Ex parte James S. Robinson, 19 Wall. 505, 22 L. Ed. 205.

Bradley v. *Fisher*, 13 Wall. 335, 20 L. Ed. 648.

Connelly v. *U. S.*, (Cir. Ct. 8th Cir.) 59 F. 2d 929.

Hertz v. *U. S.*, (Cir. Ct. 8th Cir.) 18 F. 2d 52.
In re Richards, 333 Mo. 907, 63 S. W. 2d 672.
5 Am. Jur., Sec. 252, p. 411.
6 C. J., Sec. 37, p. 580.
7 C. J. S., Sec. 18, p. 728.
2 R. C. L., Sec. 179, pp. 1086, 1087.

IV.

The petition for the writ of certiorari should be denied because the judgment of the Supreme Court of Missouri disbarring the petitioner as an attorney from practicing law before it does not deprive him of any privilege or immunity secured by the Constitution or the laws of the United States.

Bradwell v. *State of Illinois*, 16 Wall. 130, 21 L. Ed. 442.
Ex parte Lockwood, 154 U. S. 116, 14 S. Ct. 1082, 38 L. Ed. 929.
Philbrook v. *Newman et al.*, (Cir. Ct. N. D. Cal.) 85 Fed. 139.
Green v. *Elbert*, (8th Cir.) 63 Fed. 308.
Mitchell v. *Greenough*, (Cir. Ct. 9th Cir.) 100 F. 2d 184.
In re Robinson, 131 Mass. 376.
Ruckenbrod v. *Mullins et al.*, (Utah) 133 Pac. 2d 335.
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7 C. J. S., Sec. 4B, p. 708.
5 Am. Jur., Sec. 14, p. 270.

V.

The petition for the writ of certiorari should be denied because the petitioner has been accorded due process of law. The petitioner has had a hearing and trial in the regularly constituted courts of Missouri, both trial and appellate, in the manner authorized by the constitution and

laws of Missouri. Such matters of procedure are governed by the laws of the forum and the decision of the Supreme Court of Missouri on a matter of state procedure is not reviewable by this court.

Kenney v. *Craven*, 215 U. S. 125, 30 S. Ct. 64, 54 L. Ed. 122.

Gibson v. *Mississippi*, 162 U. S. 565, 16 S. Ct. 904, 40 L. Ed. 1075.

Central Vermont and Railway Co. v. *White*, 238 U. S. 507, 35 S. Ct. 869, 59 L. Ed. 1433.

Wilson v. *North Carolina*, 169 U. S. 586, 42 L. Ed. 865.

Leimer v. *Hulse*, 178 S. W. 2d 335.

VI.

The petition for the writ of certiorari should be denied because the Supreme Court of the United States will not review the action of the Supreme Court of Missouri in disbarring attorneys admitted to practice by the Supreme Court of Missouri.

Ex parte Secombe, 19 How. 9, 15 L. Ed. 565.

Selling v. *Radford*, 243 U. S. 46, 61, L. Ed. 585.

ARGUMENT.

POINT I.

The petition for the writ of certiorari should be denied because it violates Section II of Rule 38 of this court in that it does not contain a clear and concise statement of the case.

This petition for writ of certiorari should be denied because it violates paragraph II of Rule 38 of this court. The petition does not contain a summary or short statement of the matter involved. It does not disclose the basis upon which it is contended that this court has jurisdiction to review the decision of the Supreme Court of Missouri, nor does it disclose the questions presented and the reasons relied on for the allowance of the writ. A reading of this statement will not disclose the basis upon which the petitioner seeks to have this court review the decision of the Supreme Court of Missouri or the questions sought to be presented to this court and the basis for this court taking jurisdiction of this cause. The statement does not disclose what the Supreme Court of Missouri held in its decision with reference to the petitioner, nor what right of the petitioner has been violated by the decision of the Supreme Court of Missouri so as to entitle him to a review by this court.

It is not a clear, definite and complete disclosure concerning the controversy involved, as required in applications for writs of certiorari.

The statement does not comply with Section II of Rule 38, and should be dismissed.

Rule 38, S. Ct., U. S.

Southern Power Co. v. *North Carolina Public Service Co.*, 263 U. S. 508.

Magnum Import Co. v. *Houbigant, Inc.*, 262 U. S. 159.

POINT II.

The petition for the writ of certiorari should be denied by this court because it does not appear from the petition for the writ that the Supreme Court of Missouri has decided a federal question of substance not heretofore determined by this court, nor does it appear that the Supreme Court of Missouri has decided any federal question in a way not in accord with the applicable decisions of this court.

The petition herein does not come within the provisions of Paragraph A of Section V of Rule 38 of this court, which provides as follows:

> "Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

Respondents submit that the writ of certiorari does not issue from this court as a matter of right. A writ will not issue to a state court unless the case falls within the above rule. The petitioner has not pointed out in his petition what federal question of substance was determined by the Supreme Court of Missouri in the decision of *Leimer* v. *Hulse*, 178 S. W. 2d 335, which was not theretofore determined by this court, nor has he pointed out how the Supreme Court of Missouri has decided a federal question not in accord with the applicable decisions of this court.

This is a disbarment proceedings. It involves the right of the Supreme Court of Missouri to disbar the petitioner whom it had heretofore admitted to practice in this state. No federal question is presented in this case. The right of the petitioner to practice law is not a federal question. The act of the Supreme Court of Missouri in denying to the petitioner the right to continue the practice of

law does not create a federal question under the above rule within the laws and Constitution of the United States, as is pointed out hereafter. No federal question is involved in this case and the petition should be denied.

The decision of the Supreme Court of Missouri herein, is consistent with and in accord with the decisions of this court in disbarment proceedings as will be seen later in this brief.

POINT III.

The petition for the writ of certiorari should be denied because this is a disbarment proceedings and the Supreme Court of Missouri has the inherent right to regulate the admission and disbarment of its officers and attorneys.

The petitioner, Walter A. Leimer, was admitted to practice by the Supreme Court of Missouri in 1922. He was admitted to practice under the laws of Missouri and the rules of the Supreme Court of Missouri. The Supreme Court of Missouri having granted him the right to practice, has the right to take away the privilege for proper cause. In *Bradley* v. *Fisher,* 13 Wall. 335, 20 L. Ed. 646, l. c. 651, this court, in speaking of disbarment of attorneys, says:

> "If now, we apply the principle thus stated, the question presented in this case is one of easy solution. The Criminal Court of the District, as a court of general criminal jurisdiction, possessed the power to strike the name of the plaintiff from its rolls as a practicing attorney. This power of removal from the Bar is possessed by all courts which have authority to admit attorneys to practice. It is a power which should only be exercised for the most weighty reasons, such as would render the continuance of the attorney in practice incompatible with a proper respect of the court for itself or a proper regard for the integrity of the profession. And, except where mat-

ters occurring in open court in presence of the judges constitute the grounds of its action, the power of the court should never be exercised without notice to the offending party of the grounds of complaint against him, and affording him ample opportunity of explanation and defense. * * *"

In *Hertz* v. *U. S.*, (Cir. Ct. 8th Cir.) 18 F. 2d 52, the Circuit Court of Appeals for the Eighth Circuit, l. c. 54, expresses the rule as follows:

> "The inherent power exists in every court to disbar an attorney for improper professional conduct. Referring to this subject the Supreme Court of the United States said in *Bradley* v. *Fisher*, 80 U. S. (13 Wall.) 335, 354 (20 L. Ed. 646):
>
> > 'This power of removal from the bar is possessed by all courts which have authority to admit attorneys to practice. It is a power which should only be exercised for the most weighty reasons, such as would render the continuance of the attorney in practice incompatible with a proper respect of the court for itself, or a proper regard for the integrity of the profession.'
>
> See, also, *Selling* v. *Radford*, 243 U. S. 46, 37 S. Ct. 270, 61 L. Ed. 726; *Ex parte In the Matter of David A. Secombe*, 19 How. 9, 15 L. Ed. 565; *Ex parte Robinson*, 86 U. S. (19 Wall.) 505, 22 L. Ed. 205; *United States ex rel. Hallett* v. *Green*, (C. C.) 85 Fed. 857; *In re Boone*, (C. C.) 83 Fed. 944; 6 C. J., p. 580, Art. 37; Weeks on Attorneys, Art. 80."

The rules above announced that a court which admits an attorney to practice has the inherent right to disbar him is further supported by the cases cited in the Points and Authorities. The Supreme Court of Missouri in the case of *In re Richards*, 63 S. W. 2d 672, at page 674, collects a great number of cases from the federal courts and the supreme courts of most of the states of the

Union as supporting the above rule. A citation of those cases here would be burdensome.

The Supreme Court of Missouri, having admitted the petitioner to practice, therefore had an inherent right to disbar the petitioner for proper cause, in the absence of constitutional or statutory prohibitions. There are no constitutional or statutory prohibitions which would prohibit the Supreme Court of Missouri from disbarring the petitioner for cause, as will be seen hereafter.

POINT IV.

The petition for the writ of certiorari should be denied because the judgment of the Supreme Court of Missouri disbarring the petitioner as an attorney from practicing law before it does not deprive him of any privilege or immunity secured by the Constitution or the laws of the United States.

As will be seen above, the Supreme Court of Missouri has the inherent right to regulate the admission and disbarment of its attorneys. The exercise of that right by the Supreme Court of Missouri does not violate any of the privileges or immunities secured by the Constitution or laws of the United States. This Court in *Bradwell* v. *Illinois*, 16 Wall. 130, 21 L. Ed. 442, in discussing the right to practice law in a state court with reference to the 14th amendment to the Constitution of the United States, says, l. c. 445, as follows:

> "In regard to that Amendment counsel for the plaintiff in this court truly says that there are certain privileges and immunities which belong to a citizen of the United States as such; otherwise it would be nonsense for the 14th Amendment to prohibit a State from abridging them, and he proceeds to argue that admission to the bar of a State, of a person who possesses the requisite learning and character, is one of those which a State may not deny.

In this latter proposition we are not able to concur with counsel. We agree with him that there are privileges and immunities belonging to citizens of the United States, in that relation and character, and that it is these and these alone which a State is forbidden to abridge. But the right to admission to practice in the courts of a State is not one of them. This right in no sense depends on citizenship of the United States. It has not, as far as we know, ever been made in any State or in any case to depend on citizenship at all. Certainly many prominent and distinguished lawyers have been admitted to practice both in the State and Federal Courts, who were not citizens of the United States or of any State. But, on whatever basis this right may be placed, so far as it can have any relation to citizenship at all, it would seem that, as to the courts of this State, it would relate to citizenship of the State, and as to Federal Courts, it would relate to citizenship of the United States."

This Court announces the same rule in *Ex parte Lockwood*, 154 U. S. 116, 14 S. Ct. 1082, 38 L. Ed. 929.

In *Philbrook* v. *Newman*, 85 Fed. 139, the Circuit Court of the Northern District of California, in holding that a judgment of a State Court disbarring an attorney from practicing before it does not deprive him of any privilege or immunity secured by the Constitution or laws of the United States, says at l. c. 142, as follows:

> "In the case of *Duncan* v. *Missouri*, 152 U. S. 382, 14 S. Ct. 571, the supreme court again says:
>
> > 'But the privileges and immunities of citizens of the United States protected by the fourteenth amendment are privileges and immunities arising out of the nature and essential character of the federal government, and granted or secured by the constitution.'

Plaintiff received the right to practice law in the courts of California in pursuance of the laws of California, and not by virtue of any provision of the laws or the constitution of the United States. He was disbarred under the provisions of the law of California, and not those of the national government. I think it may be safely asserted, therefore, that the statute under which plaintiff claims the right to bring this action does not apply to this case. In the proceedings to disbar him, he was not deprived of any right, privilege, or immunity secured to him by the constitution or laws of the United States. And it may be said the judgment against him was not entered as a punishment, but for the protection of the court. But plaintiff asserts that he was deprived of his rights without due process of law. I have already partly discussed this question, in considering the jurisdiction of the supreme court of the state in the disbarment proceedings. In the case of *Duncan* v. *Missouri*, *supra*, the supreme court said:

> 'Due process of law and the equal protection of the law are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government.' "

Further support of this proposition will be found in the cases cited under this Point in Points and Authorities.

From the foregoing it is evident that the Supreme Court of Missouri in disbarring the petitioner did not deprive him of any of the privileges or immunities secured by the constitution or laws of the United States. Such being true, no federal question is presented in this proceedings and the petitioner has failed to bring himself within the rules giving this court jurisdiction to review the decision herein.

The right to practice law is not a property right within the purview of the constitution, but is a privilege which is not secured by the constitution and laws of the United States.

The rule is laid down in 7 C. J. S., Sec. IVB, p. 708, which provides as follows:

> "The right to practice law is not a natural or constitutional right, nor an absolute right, or a right *de jure*, but is a privilege or franchise. The right to practice law is not 'property' nor in any sense 'contract' nor a 'privilege or immunity' within the constitutional meaning of those terms. It cannot be assigned or inherited but must be earned by hard study and good conduct."

POINT V.

The petition for the writ of certiorari should be denied because the petitioner has been accorded due process of law. The petitioner has had a hearing and trial in the regularly constituted courts of Missouri, both trial and appellate, in the manner authorized by the constitution and laws of Missouri. Such matters of procedure are governed by the laws of the forum and the decision of the Supreme Court of Missouri on a matter of state procedure is not reviewable by this court.

Since the right to practice law is not a property right or a privilege secured by the constitution and laws of the United States, no federal question can exist on that proposition. While the petitioner does not point out the federal questions involved upon which he seeks to have this court review this case, the only other federal question which could be involved would be whether the petitioner had been deprived of due process of law. The respondents insist, however, that there is no basis in this record for such a contention.

The petitioner was charged by an information filed by the State Bar Advisory Committee of the Supreme Court of Missouri, which was created under the rules of the Supreme Court of Missouri. This information was filed in the Circuit Court of Jackson County, Missouri.

The petitioner was served with process as required by law. The petitioner, after many dilatory pleas and motions, joined issue by filing his answer in the cause. The trial was had before the Circuit Court of Jackson County, Missouri, in which the petitioner appeared in person and through his attorneys. Many witnesses were presented on behalf of the petitioner in support of his explanation and defense to the charge made. The trial in the trial court was conducted according to the practice and procedure of the laws of Missouri. From an adverse judgment in the trial court the petitioner, by writ of error, had his case reviewed by the Supreme Court of Missouri. The petitioner had his day in court. His trial was had in the regularly constituted courts of Missouri, both trial and appellate, in the manner authorized by the constitution and laws of Missouri. The petitioner has, therefore, been accorded due process of law.

This court in discussing due process in the case of *Wilson* v. *State of North Carolina ex rel. Caldwell*, 169 U. S. 586, 42 L. Ed. 865, at 870 of the L. Ed., says as follows:

> "The only question for us to review is whether the state, through the action of its governor, and judiciary, has deprived the plaintiff in error of his property without due process of law, or denied to him the equal protection of the laws.
>
> "We are of the opinion the plaintiff in error was not deprived of any right guaranteed to him by the Federal Constitution, by reason of the proceedings before the governor under the statute above mentioned, and resulting in his suspension from office.
>
> "The procedure was in accordance with the Constitution and laws of the state. It was taken under a valid statute creating a state office in a constitutional manner, as the state court has held. What kind and

how much of a hearing the officer should have before suspension by the governor was a matter for the state legislature to determine, having regard to the Constitution of the state. The procedure provided by a valid state law for the purpose of changing the incumbent of a state office will not in general involve any question for review by this court. A law of that kind does but provide for the carrying out and enforcement of a policy of a state with reference to its political and internal administration, and a decision of the state court in regard to its construction and validity will generally be conclusive here. The facts would have to be most rare and exceptional which would give rise in a case of this nature to a Federal question.

"Upon this subject it was said in the case of *Allen* v. *Georgia*, 166 U. S. 138 (41:949), as follows:

> 'To justify any interference upon our part it is necessary to show that the course pursued has deprived, or will deprive, the plaintiff in error of his life, liberty, or property without due process of law. Without attempting to define exactly in what due process of law consists, it is sufficient to say that, if the supreme court of a state has acted in consonance with the constitutional laws of a state and its own procedure, it could only be in very exceptional circumstances that this court would feel justified in saying that there had been a failure of due legal process. We might ourselves have pursued a different course in this case, but that is not the test. The plaintiff in error must have been deprived of one of those fundamental rights, the observance of which is indispensable to the liberty of the citizen to justify our interference.'

"This statement is quoted with approval in *Hovey* v. *Elliott*, 167 U. S. 409, at 443 (42:215, at 230)."

A reference to the decision of *Leimer* v. *Hulse et al.*, 278 S. W. 2d 335, will disclose that the petitioner has been accorded due process.

It is evident from the foregoing that there is no federal question presented in this record with reference to the question of due process.

POINT VI.

The petition for the writ of certiorari should be denied because the Supreme Court of the United States will not review the action of the Supreme Court of Missouri in disbarring attorneys admitted to practice by the Supreme Court of Missouri.

The respondents respectfully insist that this court has no authority to review the judgment of the Supreme Court of Missouri disbarring petitioner. The Supreme Court of Missouri which admitted the petitioner to practice had the inherent right to disbar petitioner for good cause. Petitioner's right to practice law is not a property right, nor is it a privilege secured by the constitution or laws of the United States. The petitioner has had his day in court according to the constitution and laws of the State of Missouri. No federal question is presented herein to give this court jurisdiction and this court will not review the judgment of the Supreme Court of Missouri in disbarring an attorney.

That this court has no authority to review the decision of the Supreme Court of Missouri in a disbarment proceedings is supported by the decision of this court in the case of *Selling* v. *Radford*, 243 U. S. 46, 61 L. Ed. 585. This court, in speaking of a disbarment case, at 61 L. Ed., l. c. 587, says:

> "In the light of these conclusions, the question is, What, consistently with the duty which rests upon

us, is exacted in dealing with the situation now presented?

"In coming to solve that question three things are patent: (a) that we have no authority to re-examine or reverse, as a reviewing court, the action of the supreme court of Michigan in disbarring a member of the Bar of the courts of that state for personal and professional misconduct; * * *."

A similar view of this court is also expressed in the case of *Ex parte Secombe*, 19 How. 9, 15 L. Ed. 565.

Conclusion.

The respondents respectfully submit that the petitioner's application for writ of certiorari herein should be denied. The petitioner has not complied with the rules of this court as to the form of his petition. He has not presented to this court any federal question authorizing this court to review the decision of the Supreme Court of Missouri for the reason that no such federal question exists herein. The Supreme Court of Missouri has an inherent right not based on the Federal Constitution or laws to disbar the petitioner. The petitioner was accorded a hearing and trial in the regularly constituted courts of Missouri, both trial and appellate, in the manner authorized by the Constitution and Laws of Missouri. The question involved here presents a matter of purely local or state law and this court will not review the action of the Supreme Court of Missouri in disbarring the petitioner.

Respectfully submitted,

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FRANK W. HAYES,

Attorneys for Respondents.

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FILED
SEP 25 1944
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 352. 1256

WALTER A. LEIMER, PETITIONER,

VS.

FRED B. HULSE, JOHN GROVER ET AL.,
RESPONDENTS.

BRIEF OF PETITIONER IN REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

WALTER A. LEIMER,
Attorney and Petitioner.

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In reply to the brief and argument of Respondents Relator states that not only have the Courts laid down precepts and precedents but that the legislature of Missouri has also enacted legislation to insure the litigant a fair hearing before a disinterested judge or tribunal.

In re Howell, 273 Mo. 96, 122, 200 S. W. 65, the Missouri Supreme Court held:

> "It is plain that Judge Wear by his relation to his son the defendant was disqualified and knowing this it was his imperative duty to either order the election of a special judge or call the Judge of another Circuit to sit in the trial of the said indictment.
>
> * * * * * * *

> "As a legal conclusion flowing from this reasoning it would also seem that the duty of a judge whose right to sit was challenged be equally imperative, regardless of the ground of his disqualification urged, if within the terms of the Statute."

The legislature has enacted the following law which appears in the Revised Statutes of Missouri, 1939, Section 2012, of which the Court will take judicial notice:

> "No judge of any court of record who is interested in any suit or related to either party or who shall have been counsel in any suit or proceeding pending before him, shall without the consent of the parties thereto sit in trial or determination thereof."

To deny relator parity with other lawyers under similar circumstances or with the layman or corporation in the defense of his franchises and privileges is not based upon sound reasoning but upon "fanciful conjecture" and such reasoning is contrary to the equal protection clause of the Fourteenth Amendment to the Federal Constitution.

ARGUMENT.

The cases cited in respondents' brief alleging that the right to practice law is not a property right and that it does not constitute either liberty, property, privilege or immunity which is subject to the inhibitions of the Federal Constitution are inconsistent and in hopeless conflict with the long unbroken line of cases in this Court holding that the right to follow a chosen occupation is both property and liberty subject to such inhibitions and especially those of the Fourteenth Amendment to the Constitution.

Decisions holding to the contrary with those of this Court in the *Algeyer, Ex parte Virginia* and the *Slaughter House cases, supra*, holding that a lawyer has no vested actual or litigating right before the Federal Courts are in themselves discriminatory and that such a discrimination is unjust and unreasonable.

Relator contends that the practice of law existed prior to the foundation of the Courts of the land and prior to the existence of the Federal Constitution. That it was those skilled in the practice of the law who supervised the drafting of the Federal Constitution and that it was not the intent or purpose, either by implication or otherwise, to deny the lawyer parity with the layman before the Courts of the land when the privilege was first granted to the Courts to operate. To hold in effect that one following such a calling, and licensed to appear before the Courts of the land as agent, attorney and advocate with authority to protect his principal, is to be denied the right to protect himself under the same or similar circumstances, is an arbitrary and unreasonable discrimina-

tion and such decisions, which by implication so hold, should be reversed as repugnant to the law of the land and to common judgment. To hold otherwise is to hold the bar of the land up to public ridicule and contempt.

Relator states that the Supreme Court of the State of Missouri in the case of *State ex rel. McKittrick* v. *C. S. Dudley Co.*, 102 S. W. 2d 895, 340 Mo. 852, has held the right to practice law is a *franchise or privilege* not open to every person and that doctrine has been upheld in decisions from a number of states.

In 26 Corpus Juris 1022 and 1023, it is stated:

> "A *franchise* is entitled as property to protection under Constitutional guarantees and cannot be taken from the holder except in payment of due compensation or destroyed or arbitrarily interfered with by subsequent legislation or by arbitrary acts of public authorities in refusing to permit the use thereof."

Various jurisdictions, too numerous to recite have held a franchise to be a right or privilege granted by a sovereign power, a specific example of which is the case of *McAllister Eufaula Telephone Co.* v. *State ex rel. Baker-Reidt Merc. Co.*, 108 Pac. 962, 25 Okla. 524.

This high Court in the past has held that occupations such as that of the butcher, the baker, the barber, the plumber, the fish monger and the purveyor of liquors are all avocations subject to the inhibitions of the Fourteenth Amendment to the Federal Constitution, although subject to State and Federal regulation and police power.

The decisions cited in respondents' brief as well as any others along this line which deny the parity of the lawyer with that of common occupations constitute an unreasonable discrimination, a differentiation without a distinction, at least a reasonable one. To hold that the right to practice law or the franchise guaranteeing such

a right is not a right, privilege or immunity subject to the inhibitions of the Fourteenth Amendment to the Federal Constitution, but may be arbitrarily impaired or terminated by the State without regard to the Federal Constitution is in effect to raise the State above its creative source from which it derived its power as well as its charter.

In support of the contention of relator that the case at bar falls within the equal protection clause of the Constitution is the case of *Hartford Steam Boiler Ins. Co.* v. *Harrison*, 301 U. S. 549, 57 S. Ct. 838, 9, l. c. 461, wherein this Court held:

> "It may be said generally that the rights of all persons must upon the same rule under similar circumstances * * * that it applies to the exercise of all the powers of the State which can affect the individual or his property."

P. 462:

> "Discriminations are not to be supported by mere fanciful conjectures, * * * they cannot stand as reasonable if they offend the plain standards of common sense."

Relator contends that regardless of whether the right to practice law be termed a right, privilege, immunity, franchise, or property that there is a substantial right involved which affects the individual, otherwise there would be no necessity to have any adjudication of the matter, or to go before any Court, to issue summons, to file charges to destroy the franchise which had been previously granted.

If the right to earn a living at the practice of law and to represent others as agent and attorney before the courts and the drafting of corporate and other franchises,

is not a property right or a privilege, then any Court may arbitrarily and despotically strike the name of an attorney from its rolls without any trial or hearing as only the Court is involved.

The fallacy of such argument is too apparent to attract serious consideration, as the Courts consistently restrain the practice of law in individuals and corporations acting with out license. Such oppression and unreasonable discrimination affecting indirectly and directly the rights of all litigants and causing fear, apprehension and confusion to arise in the minds of the bar as well as the public should be clarified and decisions in conflict should be reversed, so that the Bar of the land may be placed upon a parity with the layman and its dignity as well as the dignity and usefulness of the Courts preserved. But above all the rights of the litigants forced to appear before the Courts through counsel should be protected and not subjected to oppression and intimidation by indirect means through regimentation exercised upon their Counsel.

In other words, the attorney should be free to act and not be constantly in fear that he will be deprived the right to make a living for himself and family should he merit the displeasure of some judge and this without the customary formalities of law afforded the client whom he represents or any other layman.

Relator contends that he has still another property right issuing out of, and dependent upon the perpetuation of the franchise to practice law granted him by the State of Missouri, which is subject to the inhibitions of the due process clause and the equal protection clause of the Fourteenth Amendment to the Federal Constitution, namely, that of good will accruing to him while operating under the franchise granted him by the State of Missouri.

Relator maintains that no one versed in the law will seriously contend that good will is not a property right in

any occupation or business, in fact the matter is so elemental that to cite decisions to this Court seems useless.

It has been held in the following cases that a doctor may sell the good will of his business and the Courts will recognize the right of the purchaser to such good will.

Hoyt v. *Holly,* 39 Conn. 326, 12 Am. Rep. 390.
Dwight v. *Hamilton,* 113 Mass. 175.
Townsend v. *Hurst,* 37 Miss. 679.
Davies v. *Mason,* 5 Term Rep. 118.
Mallor v. *May,* 11 M. & W. 652.

As to good will being a property right see also *Camden* v. *Stewart,* 144 U. S. 104, 12 S. Ct. 585, 36 L. Ed. 363.

It has also been held that:

> " 'Good will' is property of an intangible nature and the term 'property' includes good will"

in *Red Wing Malting Co.* v. *Willents,* (C. C. A. Minn.) 15 F. 2d 626, 629.

This Court has approved such a definition and doctrine in *Metropolitan Bank* v. *St. Louis Dispatch Co.,* 149 U. S. 436, 13 S. Ct. 44, 37 L. Ed. 799, and it has been adopted by Corpus Juris 28, p. 730:

In an outstanding case in Texas it was held,

> "Good will is property, It may be sold, it may also be damaged. There is no principle of law making any distinction between it and any other property with respect to the right of the owner thereof to recover damages for its destruction. * * * In that case as in this, damages resulted from the temporary interruption of its business. * * * In submitting issues calling for findings for damages of this nature, it must be borne in mind that the damages recoverable are for injuries to property. Good will though intangible is an integral

part of the business the same as are the physical assets."

Texas and Pacific Ry. Co. v. *Mercer*, 90 S. W. 2d 557, 560.

If property, which embraces good will, can be swept away by the arbitrary or despotic acts of any State Court without adhering to any of the rules of evidence, pleading or procedure or the Statutory or Constitutional law protecting individual rights, if it is definitely a State right not on a parity with the good will accruing to the layman, the individual or corporation operating under any other avocation or franchise, if the lawyer has the power to protect his client but not himself, then relator contends that we have opened an avenue for regimentation, oppression and discrimination that in effect emasculates the lawyer and holds him up to public ridicule and contempt.

The Relator contends that the practice of law is not so mean and lowly a calling that it is not entitled to an equal standing before the Courts of the land with that of the layman and the corporation which is entirely a creature of statutory origin.

That inconsistent decisions which tend to degrade the Bar and hold it up to ridicule destroy its dignity and usefulness.

Relator seriously contends that he is entitled to a fair hearing and due process of law before this high Court as well as the trial Court, before his right, privileges, franchises and good will can be impaired or destroyed.

That he is not supported by the Courts nor are other members of the Bar and that he and they are compelled to depend upon the public for their support in pursuance of their occupation.

That there is no real or actual difference between the rights obtained under the franchise granted a lawyer and

that bestowed upon an individual or corporation intrusted with the health, safety or lives of the public, all of which are subject to the police power of the State.

That this Court protects the liberty and property of the most lowly alien and that the question of citizenship should not enter into the decision.

Relator further contends that he is not only entitled to a hearing afforded any other lawyer, but a fair hearing before a disinterested judge and tribunal both of which have been denied, and that any alleged decision to the contrary is in conflict with the precepts of the Federal Constitution.

The question is momentous in that the rights, property and liberty of his clients have been submerged and subverted in the effort to retaliate upon relator.

That the writ of certiorari should issue because of the colorable judgment unsupported by the rolls and the evidence and because of the deprivation of the equal protection of the law, if for none of the other reasons advanced.

Respectfully submitted,

WALTER A. LEIMER,
Relator and Petitioner.